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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 12, 2021

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THOMAS SWARERS,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

4:20-CV-05247-SAB

**ORDER SUMMARILY
DISMISSING HABEAS
PETITION**

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

PROPER RESPONDENT

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360. While Petitioner could conceivably remedy this issue, the Court finds the additional deficiencies discussed

ORDER SUMMARILY DISMISSING HABEAS PETITION -- 1

1 below would make amendment futile.

2 EXHAUSTION REQUIREMENT

3 Petitioner challenges a 2018 Benton County jury conviction for an
 4 unspecified charge. ECF No. 1 at 1-2. He does not provide the length of his
 5 sentence and invites the Court to “see case file” that he fails to provide. *Id.* at 1.
 6 Petitioner indicates he appealed his conviction and sentence to the Benton County
 7 Superior Court on an unspecified date asserting ineffective assistance of counsel,
 8 and his appeal was denied. *Id.* at 2. He also indicates the Washington State
 9 Supreme Court denied review on April 29, 2020. *Id.*

10 Throughout the petition, Petitioner invites the Court to “see” his numbered
 11 attachments, A-1 to A-25, *Id.* at 5-13. In his grounds for federal habeas relief,
 12 Petitioner argues the State of Washington has no jurisdiction to decide federal
 13 constitutional matters. *Id.* at 17-19. It has long been settled that state courts are
 14 competent to decide questions arising under the U.S. Constitution. *See Baker v.*
 15 *Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the state court, as much as it is
 16 that of the federal courts, when the question of the validity of a state statute is
 17 necessarily involved, as being in alleged violation of any provision of the federal
 18 constitution, to decide that question, and to hold the law void if it violate that
 19 instrument.”); *see also Worldwide Church of God v. McNair*, 805 F.2d 888, 891
 20 (9th Cir. 1986) (holding that state courts are as competent as federal courts to
 21 decide federal constitutional matters). Therefore, Petitioner’s arguments to the
 22 contrary lack merit.

23 Additionally, before a federal court may grant habeas relief to a state
 24 prisoner, the prisoner must exhaust the state court remedies available to him. 28
 25 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally
 26 requires that a prisoner give the state courts an opportunity to act on his claims
 27 before he presents those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S.
 28 838 (1999). A petitioner has not exhausted a claim for relief so long as the

1 petitioner has a right under state law to raise the claim by available procedure. *See*
 2 *Id.*; 28 U.S.C. § 2254(c).

3 To meet the exhaustion requirement, the petitioner must have “fairly
 4 present[ed] his claim in each appropriate state court (including a state supreme
 5 court with powers of discretionary review), thereby alerting that court to the
 6 federal nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,
 7 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court
 8 by describing the factual or legal bases for that claim and by alerting the state court
 9 “to the fact that the ... [petitioner is] asserting claims under the United States
 10 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249
 11 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in
 12 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513
 13 U.S. at 365–366.

14 Furthermore, to fairly present a claim, the petitioner “must give the state
 15 courts one full opportunity to resolve any constitutional issues by invoking one
 16 complete round of the State's established appellate review process.” *O'Sullivan*,
 17 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
 18 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
 19 (1971). It appears from the face of the Petition and supporting documents that
 20 Petitioner has not exhausted his state court remedies as to each of his grounds for
 21 relief.

22 **GROUND FOR FEDERAL HABEAS RELIEF**

23 Petitioner asserts that the Washington state constitution contradicts the
 24 federal constitution regarding the Fifth Amendment right to “presentment or
 25 indictment of a Grand Jury.” ECF No. 1 at 17. He claims “no bill of indictment”
 26 was brought against him rendering his arrest, conviction and imprisonment illegal.
 27 *Id.*

28 The United States Supreme Court stated long ago: “Prosecution by

1 information instead of by indictment is provided for by the laws of Washington.
2 This is not a violation of the Federal Constitution." *See Gaines v. Washington*, 277
3 U.S. 81, 86 (1928). Consequently, Petitioner's assertions to the contrary presented
4 in his four grounds for federal habeas relief are legally frivolous.

5 Because it plainly appears from the petition and accompanying documents
6 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,
7 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254
8 Cases in the United States District Courts. **IT IS FURTHER ORDERED** that all
9 pending Motions are **DENIED as moot**.

10 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
11 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
12 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
13 taken in good faith, and there is no basis upon which to issue a certificate of
14 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
15 appealability is therefore **DENIED**.

16 **DATED** this 12th day of January 2021.



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21 Stanley A. Bastian

22 Stanley A. Bastian
23 United States District Judge
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